

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0191P

Use Tax

Calendar Years 1996 and 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated April 15, 1999 protested the penalties assessed on an audit completed on September 25, 1998.

The audit report reveals that the taxpayer failed to self-assess use tax on pharmaceutical samples and brochures given away and had no accrual system in place. The taxpayer kept records detailing the material cost, type, and quantity of each sample given away in each state, and remitted use tax to other states based on this information.

I. **Tax Administration** – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in failing to self assess use tax.

Taxpayer failed to accrue or remit use tax on clearly taxable items and has no use tax accrual system in place.

Taxpayer protests the penalty and states, for periods prior to January 1, 1997 there still remained a question in both the Taxpayer's mind and others, that the imposition of use tax, where no sales tax was attached, was improper. Taxpayer, however, had no use tax accrual system in place and filed use tax returns in other states. The ST-103's have a line clearly available for the remittance of use tax.

The department finds the taxpayer was negligent in its failure to self assess and pay use tax on clearly taxable items and the taxpayer has not provided reasonable cause for its failure to do so.

FINDING

Taxpayer's protest is denied.